

277.400 Entities eligible to file declaration of state railbanking -- Use of property subject to declaration -- Claims of aggrieved persons.

- (1) Any organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, agency of state government, or political subdivision or city of this state holding or acquiring a railroad corridor may preserve the corridor for future railroad use while utilizing the right-of-way in the interim for nonmotorized public recreational use by filing with the Secretary of State a "Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall contain the name and address of the filing entity, a textual description and map of the railroad corridor being railbanked, a statement that the entity accepts full responsibility for managing the corridor, for any legal liability arising out of the use of the corridor or, if the entity is immune from suit, that the entity agrees to indemnify the railroad for any liability arising out of the use of the corridor, and for the payment of all taxes which may validly be assessed against the corridor, and a declaration that the property is being railbanked in accordance with the provisions of Kentucky law in that the corridor is held open for future restoration of rail service and that this section only grants authority for the corridor to be utilized for nonmotorized public recreational use during the interim.
- (2) Any property that is the subject of a declaration of state railbanking, including property held by easement, shall, during the period a declaration of state railbanking remains in force, be deemed to be held for a railroad use and shall not revert to any other form of ownership. Until rail service is restored over the corridor, the declaration of state railbanking shall only authorize the use of the corridor for public, nonmotorized recreational use, with associated infrastructure. However, a declaration of state railbanking shall not preclude any public utility usage of the corridor if that usage is otherwise permitted under other applicable law. For the specific purpose of allowing railbanking under this section, an easement for railroad use shall not be deemed abandoned until the person holding the easement conveys the easement to another person for a nonrailroad use, title to the easement and the underlying estate comes into the hands of the same owner by conveyance, the easement owner files a disclaimer in the office of the county clerk of the county where the property is situated disclaiming all interest in the corridor, or the easement is declared abandoned by judicial decree.
- (3) After property is railbanked under this section, the property shall be held available for purchase by any bona fide purchaser for the restoration of rail service over the property. The following requirements shall apply to any transfer of property in contemplation of the restoration of railroad service:
 - (a) The entity that acquired the right to use the railroad corridor for a railtrail under this section or to whom that right had been subsequently transferred shall be compensated for the fair market value of the corridor together with any improvements erected thereon. Funds received by the entity under this paragraph shall be held in trust for the benefit of the public;
 - (b) All required federal and state permits and authority to reactivate and operate a railroad over the corridor shall be obtained prior to the transfer of the property for the contemplated railroad service restoration;

- (c) Adequate bond with good surety shall be posted ensuring that the railroad will be constructed, with the bond being used to cover the cost of restoring the corridor to its physical condition prior to transfer of the railbanked corridor for the contemplated railroad service restoration; and
 - (d) The physical infrastructure necessary to operate the railroad, including tracks, ties, frogs, signaling equipment, grade crossings, and the like, shall be in place one (1) year from the date of the transfer. Train service shall be in place and operating two (2) years from the date of the transfer. If these timelines are not met, the corridor and all associate physical improvements thereon shall automatically forfeit to the ownership of the entity responsible for railbanking the corridor under this section.
- (4) Any person aggrieved by the act of railbanking a railroad corridor under the provisions of this section shall bring their claims within one (1) year after the declaration of state railbanking has been filed with the Kentucky Secretary of State. Any entity against whom a claim is asserted may utilize as an offset or setoff to the amount of any recovery those amounts in state or local taxes, together with interest and penalties, that have not been paid on the value of the property through which the claimant asserts title.
- (5) Any entity which caused a declaration of state railbanking to be filed shall cause the declaration to be vacated on the files of the Secretary of State upon the cessation of use of the corridor as a nonmotorized public use trail or the reactivation of railroad service over the corridor.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 2, effective July 14, 2000.

277.402 Preservation of railroad corridors -- Public policy -- Preliminary declaration of state railbanking.

- (1) It is the public policy of this state to preserve railroad corridors for future railroad use. Toward this end, the Commonwealth recognizes that the salvage of tracks, ties, signaling equipment, ballast, and other items may indicate an intent to maximize return on present investment and not an intent to abandon any underlying easement for railroad or other use and that the obtaining of federal authority to discontinue service over or abandon a corridor does not necessarily indicate an intent to relinquish any property interests under state law. In any civil action to determine the status of a railroad use easement, ambiguity as to intent shall be resolved in favor of continued preservation of the corridor.
- (2) Any holder of a railroad corridor held by easement or otherwise may preserve that corridor by filing with the Secretary of State a "Preliminary Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall state the name of the entity holding the corridor, a textual description and map of the land area encompassed by the corridor, and a statement that the entity does not intend to abandon the corridor described in the declaration. The entity filing the declaration may at any later time cause that declaration to be withdrawn from the Secretary of State's files. While a preliminary declaration of state railbanking is on file with the Secretary of State, the corridor set out in the declaration shall not, regardless of the status or conclusion of any federal regulatory proceeding or the salvage of track and other material from the corridor,

be deemed abandoned and shall continue to exist under Kentucky law and the property encompassed by the corridor shall not revert to any other form of ownership.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 3, effective July 14, 2000.

277.404 Conservation easement under KRS 382.800 to 382.860 over land adjoining or traversed by a railtrail.

In addition to any other legal right, any person having a legal interest in land adjoining a railtrail or in the land traversed by the railtrail itself may grant to the entity holding the right to maintain a railtrail over the property a conservation easement over all or a portion of the property in accordance with KRS 382.800 to 382.860. The entity holding the right to maintain a railtrail over the corridor may, if it finds the easement's terms acceptable, yearly designate for the tax purposes of the party conveying the easement that the entity is holding the corridor pursuant to the authority granted to that entity in the easement as opposed to authority granted in KRS 277.400 or any similar law allowing railbanking under federal law. This designation shall not, however, affect in any way the legal right of that entity to hold the corridor pursuant to a federal or state railbanking law or the operation of those laws, and the right to maintain the railtrail on the land shall not lapse as the result of the extinguishment or modification of the easement. The easement, by its terms, may be limited in duration from year to year or for a set period of years, may extinguish itself upon the happening of a defined contingent future event, or may last in perpetuity.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 4, effective July 14, 2000.

277.406 Duty of railroad proposing to discontinue service or to abandon railroad corridor to notify the Railtrail Development Office and the Department of Parks.

Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the Department for Local Government and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 10, effective July 14, 2000.